

Social Security Administration

§416.1340

such custody or confinement after conviction, or violating a condition of his or her probation or parole.

[65 FR 40495, June 30, 2000]

§416.1340 Penalty for making false or misleading statements or withholding information.

(a) *Why would SSA penalize me?* You will be subject to a penalty if:

(1) You make, or cause to be made, a statement or representation of a material fact, for use in determining any initial or continuing right to, or the amount of, monthly insurance benefits under title II or benefits or payments under title XVI, that you know or should know is false or misleading; or

(2) You make a statement or representation of a material fact for use as described in paragraph (a)(1) of this section with knowing disregard for the truth; or

(3) You omit from a statement or representation made for use as described in paragraph (a)(1) of this section, or otherwise withhold disclosure (for example, fail to come forward to notify us) of, a fact which you know or should know is material to the determination of any initial or continuing right to, or the amount of, monthly insurance benefits under title II or benefits or payments under title XVI, if you know, or should know, that the statement or representation with such omission is false or misleading or that the withholding of such disclosure is misleading.

(b) *What is the penalty?* The penalty is ineligibility for cash benefits under title XVI (including State supplementary payments made by SSA according to §416.2005) and nonpayment of any benefits under title II that we would otherwise pay you.

(c) *How long will the penalty last?* The penalty will last—

(1) Six consecutive months the first time we penalize you;

(2) Twelve consecutive months the second time we penalize you; and

(3) Twenty-four consecutive months the third or subsequent time we penalize you.

(d) *Will this penalty affect any of my other government benefits?* If we penalize you, the penalty will apply only to your eligibility for benefits under ti-

ties II and XVI (including State supplementary payments made by us according to §416.2005). The penalty will not affect—

(1) Your eligibility for benefits that you would otherwise be eligible for under titles XVIII and XIX but for the imposition of the penalty; and

(2) The eligibility or amount of benefits payable under titles II or XVI to another person. For example, if you and your spouse are receiving title XVI benefits, those benefit payments to your spouse based on the benefit rate for a couple will not be affected because of the penalty. Your spouse will receive one half of the couple rate.

(e) *How will SSA make its decision to penalize me?* In order to impose a penalty on you, we must find that you knowingly (knew or should have known or acted with knowing disregard for the truth) made a false or misleading statement or omitted or failed to report a material fact if you knew, or should have known, that the omission or failure to disclose was misleading. We will base our decision to penalize you on the evidence and the reasonable inferences that can be drawn from that evidence, not on speculation or suspicion. Our decision to penalize you will be documented with the basis and rationale for that decision. In determining whether you knowingly made a false or misleading statement or omitted or failed to report a material fact so as to justify imposition of the penalty, we will consider all evidence in the record, including any physical, mental, educational, or linguistic limitations (including any lack of facility with the English language) which you may have had at the time. In determining whether you acted knowingly, we will also consider the significance of the false or misleading statement or omission or failure to disclose in terms of its likely impact on your benefits.

(f) *What should I do if I disagree with SSA's initial determination to penalize me?* If you disagree with our initial determination to impose a penalty, you have the right to request reconsideration of the penalty decision as explained in §416.1407. We will give you a chance to present your case, including the opportunity for a face-to-face conference. If you request reconsideration

§ 416.1400

of our initial determination to penalize you, you have the choice of a case review, informal conference, or formal conference, as described in § 416.1413(a) through (c). If you disagree with our reconsidered determination you have the right to follow the normal administrative and judicial review process by requesting a hearing before an administrative law judge, Appeals Council review and Federal court, review as explained in § 416.1400.

(g) *When will the penalty period begin and end?* Subject to the additional limitations noted in paragraphs (g)(1) and (g)(2) of this section, the penalty period will begin the first day of the month for which you would otherwise receive payment of benefits under title II or title XVI were it not for imposition of the penalty. Once a sanction begins, it will run continuously even if payments are intermittent. If more than one penalty has been imposed, but they have not yet run, the penalties will not run concurrently.

(1) If you do not request reconsideration of our initial determination to penalize you, the penalty period will begin no earlier than the first day of the second month following the month in which the time limit for requesting reconsideration ends. The penalty period will end on the last day of the final month of the penalty period. For example, if the time period for requesting reconsideration ends on January 10, a 6-month period of nonpayment begins on March 1 if you would otherwise be eligible to receive benefits for that month, and ends on August 31.

(2) If you request reconsideration of our initial determination to penalize you and the reconsidered determination does not change our original decision to penalize you, the penalty period will begin no earlier than the first day of the second month following the month we notify you of our reconsidered determination. The penalty period will end on the last day of the final month of the penalty period. For example, if we notify you of our reconsidered determination on August 31, 2001, and you are not otherwise eligible for payment of benefits at that time, but would again be eligible to receive payment of benefits on October 1, 2003, a 6-month period of nonpayment would

20 CFR Ch. III (4–1–13 Edition)

begin on October 1, 2003 and end on March 31, 2004.

[65 FR 42286, July 10, 2000, as amended at 71 FR 61409, Oct. 18, 2006]

Subpart N—Determinations, Administrative Review Process, and Reopening of Determinations and Decisions

AUTHORITY: Secs. 702(a)(5), 1631, and 1633 of the Social Security Act (42 U.S.C. 902(a)(5), 1383, and 1383b); sec. 202, Pub. L. 108–203, 118 Stat. 509 (42 U.S.C. 902 note).

SOURCE: 45 FR 52096, Aug. 5, 1980, unless otherwise noted.

INTRODUCTION, DEFINITIONS, AND INITIAL DETERMINATIONS

§ 416.1400 Introduction.

(a) *Explanation of the administrative review process.* This subpart explains the procedures we follow in determining your rights under title XVI of the Social Security Act. The regulations describe the process of administrative review and explain your right to judicial review after you have taken all the necessary administrative steps. The administrative review process consists of several steps, which usually must be requested within certain time periods and in the following order:

(1) *Initial determination.* This is a determination we make about your eligibility or your continuing eligibility for benefits or about any other matter, as discussed in § 416.1402, that gives you a right to further review.

(2) *Reconsideration.* If you are dissatisfied with an initial determination, you may ask us to reconsider it.

(3) *Hearing before an administrative law judge.* If you are dissatisfied with the reconsideration determination, you may request a hearing before an administrative law judge.

(4) *Appeals Council review.* If you are dissatisfied with the decision of the administrative law judge, you may request that the Appeals Council review the decision.